



THE ATTORNEY GENERAL OF TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

AUSTIN 11, TEXAS

February 25, 1955

Hon. Tom King, Chairman
Oil, Gas & Mining Committee
House of Representatives
Fifty-fourth Legislature
Austin, Texas

Letter Opinion No. MS-177

Re: Constitutionality of House
Bill 256, 54th Legislature

Dear Mr. King:

You have asked for an opinion of this office in regard to the constitutionality of House Bill No. 256, which concerns the obtaining of geophysical information without consent of the owner of the land.

We have carefully examined the provisions of H. B. 256 and authorities relating thereto. This Bill, in its present form, is unconstitutional for the following reasons:

1. That part of Section 1 of the Bill which states "... or any character of geological information or other mineral information whatsoever, pertaining to said land or water. . . ." is too vague and indefinite to apprise anyone as to what would constitute a violation of the law.

2. It should also be noted that the ownership of the mineral interest and the ownership of the land may be in two (or more) individuals. There also may be, and frequently there is, a division of ownership of the various horizontal strata beneath the surface, and of course there can be, and there frequently are, numerous owners of these various horizontal estates. Ownership of the mineral interest has always carried with it the right of ingress and egress for purposes of search. Campbell v. Schrock, 10 S.W. 2d 165 (Tex. Civ. App. 1928). This is a well established principle of law, and under this Act, the owner of the land could keep the owner of the minerals from exploring the same, and deprive him of a valuable property right without due process. Since the Act prohibits observation of geophysical information without the consent of the surface owner of the land, the Act would violate the provisions of Section 16 of Article I of the Constitution of Texas prohibiting the impairment of the obligations of contract, since owners of the mineral interest could give such person the necessary authorization to obtain geophysical information without the consent of the surface owner of the land. United North & South Oil Co., Inc. v. Mercer, et al., 286 S.W. (Tex. Civ. App. 1926).

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Aside from the foregoing, it might be noted that this Act could have very serious effects on search and rescue work in time of emergency and disaster. Local, State and Federal organizations could be seriously handicapped and life and property put in danger of loss and destruction if permission to fly over and search is first necessary from the parties below.

Section 2 of the Act seeking permission of the landowners to go upon public land would again meet the objection of an owner of the surface preventing the owner of the minerals from going upon the land and searching for minerals.

Section 4 defines "owner" as used in Section 3, and leaves ambiguity as to the meaning of "owner" throughout the remaining portions of the Act.

It is therefore the opinion of this office that H. B. 256 in its present form is unconstitutional for the above reasons.

Very truly yours,

JOHN BEN SHEPPERD
Attorney General of Texas

By
Robert O. Fagg
Assistant

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